



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

10 APR 2009

REPLY TO THE ATTENTION OF:
LR-8J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Thomas Cozza
Safety, Sanitation and Compliance Manager
Clear Lam Packaging, Inc.
1950 Pratt Boulevard
Elk Grove Village, Illinois 60007

Re: Pre-filing Notice and Opportunity to Confer
Clear Lam Packaging, Inc.
U.S. EPA ID No.: ILD 984 805 317

Dear Mr. Cozza:

This letter is to notify you that the U.S. Environmental Protection Agency is prepared to file an administrative complaint for civil penalties against Clear Lam Packaging Inc. facility (hereinafter, Clear Lam Packaging or you). In addition, this letter informs you that EPA deems Clear Lam Packaging to be a Significant Non-Complier. We are offering you an opportunity to confer with us in advance of our filing a complaint.

On May 1, 2008, a representative of the EPA inspected Clear Lam Packaging, located at 1950 Pratt Boulevard, Elk Grove Village, Illinois. The purpose of the inspection was to evaluate whether Clear Lam Packaging was in compliance with certain provisions of the Resource Conservation and Recovery Act (RCRA), specifically, those regulations related to the generation, treatment and storage of hazardous waste.

Based on information provided by personnel at the Clear Lam Packaging facility, EPA's review of records, and personal observations made by the EPA inspector at the time of the May 1, 2008, inspection, EPA has determined that Clear Lam Packaging engaged in the treatment, storage or disposal of hazardous waste without a permit, in violation of certain requirements of the Illinois Administrative Code (IAC) and United States Code of Federal Regulations (CFR).

The hazardous wastes subject to this proposed action include solvent waste (hazardous waste codes D001, F003 and F005) generated from Clear Lam Packaging's cleaning of process equipment. The failure to properly handle, store and/or dispose of these materials can result in a serious threat of harm to human health and the environment. As a result of the violations

identified below, Clear Lam Packaging has operated a hazardous waste treatment, storage or disposal facility without a permit.

The information available to date reflects that Clear Lam Packaging was in non-compliance with the following conditions for a hazardous waste permit exemption, and in violation of the following hazardous waste management requirements:

1. A generator of hazardous waste must clearly label or mark each container of hazardous waste with the words, "Hazardous Waste." *See* 35 IAC § 722.134(a)(3) [40 CFR § 262.34(a)(3)]. In addition, a large quantity generator that accumulates hazardous waste on-site for more than 90 days is an operator of a hazardous waste storage facility, and is subject to the requirements of 35 Ill. Adm. Code 724 and 725 and the permit requirements of 35 Ill. Adm. Code 702, 703, and 705 [40 CFR Parts 264, 265 and 270]. *See* 35 IAC § 722.134(b) [40 CFR § 262.34(b)].

At the time of the inspection, Clear Lam Packaging was storing one 55-gallon container of hazardous solvent waste without an accumulation date and without the words, "Hazardous Waste," marked on the container. In addition, at the time of the inspection, Clear Lam Packaging was storing one 55-gallon container of hazardous solvent waste for approximately 16 days greater than 90 days, and one 55-gallon container of hazardous solvent waste for approximately 43 days greater than 90 days. Therefore, Clear Lam Packaging was required to obtain a hazardous waste storage permit.

2. A generator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency. *See* 35 IAC §§ 722.134(a)(4) and 725.135 [40 CFR §§ 262.34(a)(4) and 265.35].

At the time of the inspection, Clear Lam Packaging was storing approximately forty 55-gallon containers of hazardous waste without adequate aisle space in the hazardous waste storage area.

3. A generator of hazardous waste must keep each container holding hazardous waste closed during storage, except when it is necessary to add or remove waste. *See* 35 IAC §§ 722.134(a)(1)(A) and 725.273(a) [40 CFR §§ 262.34(a)(1)(i) and 265.173(a)].

At the time of the inspection, Clear Lam Packaging failed to keep several containers of hazardous waste closed during storage when waste was not being added to or removed from the containers.

4. A generator of hazardous waste must inspect areas where containers are stored at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. *See* 35 IAC §§ 722.134(a)(1)(A) and 725.274 [40 CFR §§ 262.34(a)(1)(i)

and 265.174].

For the week of the inspection, Clear Lam Packaging had not inspected the area where hazardous waste containers were stored.

5. A generator of hazardous waste must successfully complete a program of classroom instruction or on-the-job training that teaches facility personnel to perform their duties in a way that ensures the facility's compliance. *See* 35 IAC §§ 722.134(a)(4) and 725.116(a)(1) and (a)(3) [40 CFR §§ 262.34(a)(4) and 265.16(a)(1) and (a)(3)].

Clear Lam Packaging's training program was not designed to ensure that facility personnel were able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems because the training program failed to include the following: (1) procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment; (2) response to groundwater contamination incidents; and (3) shutdown of operations.

6. A generator of hazardous waste must maintain the following documents and records at the facility:
 1. The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;
 2. A written job description for each position listed under paragraph (d)(1) of 35 IAC § 725.116. This description may be consistent in its degree of specificity with descriptions for other positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;
 3. The type and amount of both introductory and continuing training to be given to each employee filling a hazardous waste management position listed under paragraph (d)(1) of 35 IAC § 725.116.

See 35 IAC §§ 722.134(a)(4) and 725.116(d)(1), (2) and (3) [40 CFR §§ 262.34(a)(4) and 265.16(d)(1), (2) and (3)].

In addition, a generator of hazardous waste must maintain records that document that the training or job experience required under 35 IAC § 724.116(a), (b) and (c) has been given to, and completed by, facility personnel. *See* 35 IAC

§§ 722.134(a)(4) and 725.116(d)(4) and (e) [40 CFR §§ 262.34(a)(4) and 265.16(d)(4) and (e)].

At the time of the inspection, Clear Lam Packaging failed to: 1) maintain documents and records that described the job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job; 2) maintain documents and records providing a written job description including the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position at the facility related to hazardous waste management; and 3) maintain documents and records providing the type and amount of both introductory and continuing training to be given to each employee filling a position at the facility related to hazardous waste management.

Additionally, at the time of the inspection, Clear Lam Packaging was unable to provide documentation that the training or job experience required under 35 IAC § 725.116(a), (b) and (c) had been given to, and completed by, facility personnel for 2005 and 2006.

7. A generator of hazardous waste must meet all of the requirements of the contingency plan as required in Subpart D (contingency plan and emergency procedures) of 40 CFR Part 265. *See* 35 IAC § 722.134(a)(4); 35 IAC § 725.152(c), (d) and (e) [40 CFR § 262.34(a)(4); 40 CFR § 265.52(c), (d) and (e)].

Clear Lam Packaging's contingency plan failed to describe arrangements with the hospitals and/or emergency response teams; contain the current emergency coordinator's name, office and home phone numbers and address; or identify all of the emergency equipment including description, capability, and location.

Notice of Intent to File Complaint and Proposed Penalty

Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may issue an order assessing a civil penalty for any past or current violation and requiring compliance immediately or within a specified time period.

Based on relevant liability and penalty information available to us, EPA intends to propose a civil penalty in the amount of approximately **ninety-seven thousand five hundred sixty one dollars (\$97,561)** for the violations cited above in a civil administrative complaint and compliance order under Section 3008 of RCRA, 42 U.S.C. § 6928, as adjusted under the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 CFR Part 19, and with reference to EPA's RCRA Civil Penalty Policy. The final penalty we propose in the complaint will be based upon our consideration of any relevant new information Clear Lam Packaging provides, and upon our further consideration of the penalty policy's adjustment factors.

This letter is not a demand to pay a penalty. We will not ask you to pay a penalty until we file the complaint or a final order. Before filing the complaint, we are giving you an opportunity

to present any information that you believe we should consider regarding your liability for these violations and an appropriate penalty for them. You may present this information in writing or in a meeting with EPA representatives. Relevant information regarding liability might include evidence that you did not violate the law, or evidence that we have identified the wrong party.

You may also present information that you believe is relevant to the amount of our proposed penalty. Under RCRA, we are required to consider the seriousness of the violation and any good faith efforts you made to comply with the requirement violated. Factors relevant to the seriousness of the violation include, but are not limited to, the risks of exposure to hazardous wastes from the violation, the potential seriousness of contamination that could have resulted from the violation, the extent to which you deviated from the requirement, and how many days the violation lasted. The RCRA Civil Penalty Policy "adjustment factors" relevant to penalty include (1) any good faith efforts Clear Lam Packaging made to comply with the requirements violated, (2) the expenses Clear Lam Packaging delayed or avoided by not complying with the requirements, (3) the degree to which the violation was willful, (4) whether Clear Lam Packaging has a prior history of not complying with RCRA, (5) financial inability to pay, and (6) other unique factors. Information relevant to good faith efforts to comply with the requirements may include, for example, records documenting actions Clear Lam Packaging took to comply prior to the time that EPA or another governmental agency first discovered the violations in this case.

Additionally, if you notify us that you may be financially unable to pay a proposed penalty amount, we will consider your ability to pay prior to finalizing our penalty proposal, provided that you submit to us required financial documentation to support such a claim.

Therefore, if you believe that you may be financially unable to pay the penalty amount quoted above, or if you believe that there are financial facts and information which bear on your ability to pay a penalty, you must submit the following information to EPA:

- (1) true, accurate and complete copies of the signed and filed U.S. corporate income tax returns of each company that owns or operates the Clear Lam Packaging facility, including all schedules, forms, balance sheets and other attachments, for the most recent five (5) years;
- (2) true, accurate and complete copies of the complete corporate financial statements of each company that owns or operates the Clear Lam Packaging facility, preferably audited, including all balance sheets, income statements, statements of operations, statements of retained earnings, statements of cash flows, and all notes to each financial statement, for the most recent 5 years;
- (3) true, accurate and complete copies of all company asset depreciation schedules, cumulative for the most recent 5 years, for each company that owns or operates the Clear Lam Packaging facility;
- (4) true, accurate and complete copies of all loan applications completed during the last five years by or on behalf of each company that owns or operates the Clear Lam

Packaging facility;

(5) true, accurate and complete copies of all mortgage and other debt statements related to all the outstanding debts of each company that owns or operates the Clear Lam Packaging facility, which indicate the original date of each debt, repayment terms, and current debt balances;

(6) true, accurate and complete copies of all insurance policies which may provide coverage or reimbursement for any costs (past or future) incurred in addressing the violations described above in this letter, and all insurance policies which may provide coverage for any penalties, attorneys' fees, or other costs incurred in connection with litigation related to the violations described above in this letter;

(7) all records that reflect the value of each parcel of real estate owned in whole or in part by each company that owns or operates the Clear Lam Packaging facility (including property held in trust). Such records must include (but are not limited to) all real estate appraisals and all loan documents (including all mortgage or real estate financing documents, Real Estate Procedures Act Statements, disbursement forms and other closing documents); and

(8) the most recent county assessor statements for each parcel of real estate owned in whole or in part by each company that owns or operates the Clear Lam Packaging facility, including such information for all real property assets owned by any trusts, corporations, partnerships or other business entities, where any company that owns or operates the Clear Lam Packaging facility is an owner and/or beneficiary.

Please note that, under prevailing legal precedent, you should not be able to demonstrate "inability to pay" without providing this probative financial information. In addition, we may request additional information based on our review of the financial information that you submit in response to this notice.

Please note that the financial information requested above is only necessary if you intend to assert at any point in this matter that you are unable to pay the penalty amount that EPA is planning on proposing for the violations of RCRA described above.

You may assert a claim of business confidentiality under 40 CFR Part 2, Subpart B, for any portion of the information you submit to us. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 CFR Part 2, Subpart B. If you fail to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it.

If you choose to respond to this letter or to confer with us, you should contact Jamie Paulin of the RCRA Branch, in writing within ten (10) calendar days of your receipt of this Notice. Please be advised that this conference is **not** a settlement negotiation covered by Federal Rule of Evidence 408; we may use any information that you submit in support of an

administrative, civil or criminal action. At the conclusion of the conference or thereafter (or after you have completed a written reply if you do not wish to have a conference), we may give you the opportunity to engage in settlement negotiations before we file the complaint. In the event that such pre-filing settlement negotiations commence and are successful, a settlement agreement can be filed simultaneously with the complaint under EPA regulations at 40 CFR 22.13(b).

If you decide not to respond to this letter or to confer with us, EPA may proceed with enforcement action as authorized under Sections 3008(a) of RCRA, 42 U.S.C. § 6928(a), including the assessment of appropriate civil penalties.

A copy of the document titled "U.S. EPA Small Business Resources" is enclosed for your reference. If you have any technical questions regarding the alleged violations, please contact Ms. Paulin at (312) 886-1771 or in writing to:

Ms. Jamie Paulin
RCRA Branch
Land and Chemicals Division
U.S. EPA, Region 5
77 West Jackson Blvd.
Mail Code: LR-8J
Chicago, Illinois, 60604-3590.

Inquiries from any attorney representing you should be directed to Tamara Carnovsky, Associate Regional Counsel, at (312) 886-2250.

Sincerely,

Willie H. Harris, P.E.
Chief, RCRA Branch
Land and Chemicals Division

Enclosure

cc: Todd Marvel, Illinois Environmental Protection Agency



Office of Enforcement and Compliance Assurance
INFORMATION SHEET

U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance resources such as workshops, training sessions, hotlines, websites, and guides to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance, and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Compliance Assistance Centers

(www.assistancecenters.net)

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers that provide information targeted to industries with many small businesses.

Agriculture

(www.epa.gov/agriculture or 1-888-663-2155)

Automotive Recycling Industry

(www.ecarcenter.org)

Automotive Service and Repair

(www.ccar-greenlink.org or 1-888-GRN-LINK)

Chemical Industry

(www.chemalliance.org)

Construction Industry

(www.cicacenter.org or 1-734-995-4911)

Education

(www.campuserc.org)

Healthcare Industry

(www.hercenter.org or 1-734-995-4911)

Metal Finishing

(www.nmfrc.org or 1-734-995-4911)

Paints and Coatings

(www.paintcenter.org or 1-734-995-4911)

Printed Wiring Board Manufacturing

(www.pwbrc.org or 1-734-995-4911)

Printing

(www.pneac.org or 1-888-USPNEAC)

Transportation Industry

(www.transource.org)

Tribal Governments and Indian Country

(www.epa.gov/tribal/compliance or 202-564-2516)

US Border Environmental Issues

(www.bordercenter.org or 1-734-995-4911)

The Centers also provide State Resource Locators (www.envcap.org/statetools/index.cfm) for a wide range of topics to help you find important environmental compliance information specific to your state.

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page

www.epa.gov

Small Business Gateway

www.epa.gov/smallbusiness

Compliance Assistance Home Page

www.epa.gov/compliance/assistance

Office of Enforcement and Compliance Assurance

www.epa.gov/compliance

Voluntary Partnership Programs

www.epa.gov/partners



U.S. EPA SMALL BUSINESS RESOURCES

Hotlines, Helplines & Clearinghouses

(www.epa.gov/epahome/hotline.htm)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. A few examples are listed below:

Clean Air Technology Center

(www.epa.gov/ttn/catc or 1-919-541-0800)

Emergency Planning and Community Right-To-Know Act

(www.epa.gov/superfund/resources/infocenter/epcra.htm or 1-800-424-9346)

EPA's Small Business Ombudsman Hotline provides regulatory and technical assistance information.

(www.epa.gov/sbo or 1-800-368-5888)

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers (www.epa.gov/clearinghouse)

National Response Center to report oil and hazardous substance spills.

(www.nrc.uscg.mil or 1-800-424-8802)

Pollution Prevention Information Clearinghouse

(www.epa.gov/opptintr/ppic or 1-202-566-0799)

Safe Drinking Water Hotline

(www.epa.gov/safewater/hotline/index.html or 1-800-426-4791)

Stratospheric Ozone Refrigerants Information

(www.epa.gov/ozone or 1-800-296-1996)

Toxics Assistance Information Service also includes asbestos inquiries.

(1-202-554-1404)

Wetlands Helpline

(www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828)

State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information or the following two resources:

EPA's Small Business Ombudsman

(www.epa.gov/sbo or 1-800-368-5888)

Small Business Environmental Homepage

(www.smallbiz-enviroweb.org or 1-724-452-4722)

Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated,

businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses:

The Small Business Compliance Policy

(www.epa.gov/compliance/incentives/smallbusiness)

Audit Policy

(www.epa.gov/compliance/incentives/auditing)

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an SBA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees, or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.